IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3613 OF 2001

Natha Vishnu Patil .. Petitioner

Versus

Kondabai wife of Kerba

Patil and Ors. .. Respondents

Mr.C.G.Gavnekar with G.S.Hiranandani and

A.C.Gavnekar for petitioner

CORAM : S.C.DHARMADHIKARI, J.

DATE : DECEMBER 16, 2004.

P.C.

. Heard Mr.Gavnekar, learned Counsel appearing for petitioner. None appears for

respondents, though served. The petition challenges an order passed by the executing court below Exh.1 in Special Darkhast No.122/1996. It appears that a decree for partition having been passed, the Executing Court appointed Commissioner for purpose of effecting partition of the house property by metes and bound. Advocate Solshe was appointed as Commissioner. After completing the work assigned to him, he submitted his report on 22nd April 1999 along with Purshis Exh.46. The decree holder did not object to the report whereas the petitioner who is original judgement debtor No.1 filed his objections.

2. It appears from the record that the main objection was that the Commissioner could not have valued the house property in absence of a direction to do so by the Court. The court below was taken through the relevant provisions as well as decisions of the Supreme Court and other High

Courts on the issue as to whether a Court Commissioner apointed by the Court to effect partition of the properties by metes and bounds can value the property on his own. The court below having rejected the objection, petitioner-Judgement debtor No.1 is before me.

3. In my view, going into the issues raised in the petition would only delay the execution of the partition decree further. Instead the court below is directed to consider the objection to valuation afresh and pass appropriate orders after hearing parties in accordance with law. The court below would also explore the possibility of going ahead with the execution in so far as partition of the property by metes and bounds and issue appropriate directions with regard to valuation of the same. If the court decides to accept the Commissioner’s report in toto, petitioner would be at liberty to raise objections to the valuation by the Court

Commissioner and executing court after considering the said objections to pass appropriate orders afresh without being influenced by any observations in the impugned order. Reserving the opportunity as above, petition is disposed of. Order passed by the trial court on 18th October 2000 is quashed and set aside to the extent that it accepts the valuation of the properties done by the court commissioner. All parties to act on an authenticated copy of this order.

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